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JAMES D. STEVENS REISING, ETHINGTON, BARNES, KISSELLE, P.C. P.O. BOX 4390 TROY, MI 48099-4390			JANVIER, JEAN D	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/870,377

Filing Date: May 30, 2001

Appellant(s): PUDAR, NICK J.

James D. Stevens
For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed on 12/01/05 appealing from the Office action mailed 03/23/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The Examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The Appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,664,948	Dimitriadis	9-1997
5,774,170	Hite	6-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims

Claims 1-13, 16-19, 21- 25, 26-41 are rejected under 35 USC 102(b) as being anticipated by Dimitriadis, US Patent 5, 664, 948A.

As per claims 1-13, 16-19, 21- 25, 26-41, Dimitriadis discloses a system, wherein an advertising information is pre-loaded into a collection of remote receiving and presentation devices (40) (radios installed in vehicles). A presentation command (presentation condition or selection criteria **or marker data**) is broadcast over a radio broadcast 20 to a device (40) that causes presentation, in audio or text format, of at least one of the advertisements stored in the memory of the device (40) (monitoring a radio broadcast stream for marker data of an advertising slot within the radio broadcast stream, which triggers the presentation of the at least one stored advertisement). Each stored advertisement is also associated with one or more presentation conditions (play conditions **or marker data**) causing, when detected for example in a radio broadcast (**stream or content**) transmitted to a device 40 (or a group of devices 40), automatic presentation or play via the device 40 speaker or display through its screen of the corresponding advertisement matching the presentation conditions **or marker data** present in the radio broadcast stream. Such presentation conditions include proximity to a given location (detecting the presence of the vehicle 10 having installed therein device 40 in a geographical area of interest), scheduled periodic presentation, time of day presentation, and a variety of other conditions detectable at the remote presentation device 40 (including detecting the presence of a command or marker in a radio broadcast transmitted to the device 40). Further, the advertising presentation system requires a single broadcast signal transmission of a given advertisement

from radio broadcast 20 (radio facility) for permanent storage in the memory of the device 40, but provides multiple presentations or plays of the advertisement at the presenting devices 40. Here, the advertiser enjoys efficient use of broadcast signal transmission time (See abstract).

In general, Dimitriadis teaches an advertising system comprising a radio broadcast or signal transmission facility providing voice and data broadcast signals 22 and 26 respectively (advertisements or messages) and a plurality of remote receiving devices 40 (vehicle radio systems) collecting said voice and data signal broadcasts 22 and 26 respectively, each of said receiving devices 40 storing **selected** ones of said voice and data broadcasts 22 and 26 as stored advertisements therein in association with index values (or secondary selection data) (wherein the selected advertisements are chosen for storage according to certain criteria, such as geographical areas of interest to a specific device 40, and wherein each advertisement has an associated index value) whereby **subsequent** transmission within at least one of said voice and data broadcasts (in-line advertisements) references said index values, indicative of advertising slots or markers, and causes said remote receiving device to retrieve therefrom and present or play the corresponding stored advertisements (transmitting a radio broadcast stream with a marker or reference to an index value to a device 40 and if there is a match between the transmitted reference index value or marker in the broadcast and an index value stored in the memory of the device 40, then the system is operable to retrieve therefrom and play or present the corresponding advertisement). Each of said remote receiving devices 40 store a plurality of advertisements, each associated with an index value, uniquely identifying each advertisement, whereby said broadcast facility triggers presentation play of a selected stored advertisement at a selected remote receiving device 40 by broadcasting a command to the selected receiving device

40 in conjunction with a selected index value. Further, each stored advertisement is associated with a condition for presentation, include at least one of a schedule of presentation, proximity to a designated location, **and time of day (primary and secondary selection data)**, and each remote receiving device 40 monitors current conditions, compares current conditions to said conditions for advertisement presentation, and presents a stored advertisement upon finding a match between a current condition and a condition for presentation. In short, the present system relates generally to vehicle information and particularly to vehicle information collection and presentation (See claims 1-5; col. 2: 3-29).

In another embodiment, Dimitriadis teaches a paging system that supports group addressing whereby a single paging data packet transmission or broadcast may be addressed to groups of receiving devices 40 (to listeners of devices 40). Accordingly, advertising presentation may be accomplished relative to listeners defined as groups. For example, by developing a profile for the users of each device 40, e.g., age, class of neighborhood (demographics), typical products purchased (purchase history) and the like, as is typically done in advertising strategies, the advertiser defines groups of listeners. By loading into receiving devices 40 advertisements tailored to group needs (interests), the advertiser targets specific audiences with specific advertising messages. Moreover, one advertisement may be loaded into one group of receiving devices 40 while a second advertisement is loaded into a second group of receiving devices 40. Even though different advertisements are loaded into different receiving devices 40, all such advertisements may be associated with the same index. Accordingly, issuance of the PRESENT command 500c relative to such common index value causes distinct advertisement presentation for different groups of listeners. As may be appreciated, the radio signal transmission time

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associated with issuing the PRESENT command 500c is quite small as compared to similar advertisement broadcast time required to deliver by conventional means the same advertisement presentation, i.e., broadcast time required to present the advertisement to listeners currently tuned to the broadcast facility. Thus, an improved method and apparatus for message or advertisement presentation has been herein shown and described. Advertisement information is disseminated widely by radio signal broadcast to a population of receiving devices 40. The receiving devices 40 store this advertising information and present such information **multiple times** without requiring repeated radio signal transmission from the facility. In this manner, advertising presentation is made efficient with respect to radio transmission resources, and therefore less costly in regard to the costs associated with transmission of advertisement by radio signal (Col. 9: 45 to col. 10:20).

See in general col. 2: 62 to col. 9: 44.

Claims 14, 15, 20, 42, 43, 44 and 45 are rejected under 35 USC 103(a) as being unpatentable over Dimitriadis, US Patent 5, 664, 948 in view of Hite, US Patent 5,774,170A.

As per claims 14, 15, 20, 42, 43, 44 and 45, Dimitriadis discloses a system, wherein an advertising information is pre-loaded into a collection of remote receiving and presentation devices (40) (radios installed in vehicles). A presentation command (presentation condition or selection criteria) is broadcast over a radio broadcast 20 to a device (40) that causes presentation, in audio or text format, of at least one of the advertisements stored in the memory of the device (40) (monitoring a radio broadcast stream for marker data of an advertising slot within the radio broadcast stream, which triggers the presentation of the at least one stored advertisement). Each

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stored advertisement is also associated with one or more presentation conditions (play conditions) causing, when detected for example in a radio broadcast (stream) transmitted to a device 40 (or a group of devices 40), automatic presentation or play via the device 40 speaker or display through its screen of the corresponding advertisement matching the presentation conditions or marker data present in the radio broadcast stream. Such presentation conditions include proximity to a given location (detecting the presence of the vehicle 10 having installed therein device 40 in a geographical area of interest), scheduled periodic presentation, time of day presentation, and a variety of other conditions detectable at the remote presentation device 40 (including detecting the presence of a command or marker in a radio broadcast transmitted to the device 40). Further, the advertising presentation system requires a single broadcast signal transmission of a given advertisement from radio broadcast 20 (radio facility) for permanent storage in the memory of the device 40, but provides multiple presentations or plays of the advertisement at the presenting devices 40. Here, the advertiser enjoys efficient use of broadcast signal transmission time (See abstract).

In general, Dimitriadis teaches an advertising system comprising a radio broadcast or signal transmission facility providing voice and data broadcast signals 22 and 26 respectively (advertisements or messages) and a plurality of remote receiving devices 40 (vehicle radio systems) collecting said voice and data signal broadcasts 22 and 26 respectively, each of said receiving devices 40 storing **selected** ones of said voice and data broadcasts 22 and 26 as stored advertisements therein in association with index values (or secondary selection data) (wherein the selected advertisements are chosen for storage according to certain criteria, such as geographical areas of interest to a specific device 40, and wherein each advertisement has an

associated index value) whereby **subsequent** transmission within at least one of said voice and data broadcasts (in-line advertisements) references said index values, indicative of advertising slots or markers, and causes said remote receiving device to retrieve therefrom and present or play the corresponding stored advertisements (transmitting a radio broadcast stream with a marker or reference to an index value to a device 40 and if there is a match between the transmitted reference index value or marker in the broadcast and an index value stored in the memory of the device 40, then the system is operable to retrieve therefrom and play or present the corresponding advertisement). Each of said remote receiving devices 40 store a plurality of advertisements, each associated with an index value, uniquely identifying each advertisement, whereby said broadcast facility triggers presentation play of a selected stored advertisement at a selected remote receiving device 40 by broadcasting a command to the selected receiving device 40 in conjunction with a selected index value. Further, each stored advertisement is associated with a condition for presentation, include at least one of a schedule of presentation, proximity to a designated location, **and time of day (primary and secondary selection data)**, and each remote receiving device 40 monitors current conditions, compares current conditions to said conditions for advertisement presentation, and presents a stored advertisement upon finding a match between a current condition and a condition for presentation. In short, the present system relates generally to vehicle information and particularly to vehicle information collection and presentation (See claims 1-5; col. 2: 3-29).

In another embodiment, Dimitriadis teaches a paging system that supports group addressing whereby a single paging data packet transmission or broadcast may be addressed to groups of receiving devices 40 (to listeners of devices 40). Accordingly, advertising presentation

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may be accomplished relative to listeners defined as groups. For example, by developing a profile for the users of each device 40, e.g., age, class of neighborhood (demographics), typical products purchased (purchase history) and the like, as is typically done in advertising strategies, the advertiser defines groups of listeners. By loading into receiving devices 40 advertisements tailored to group needs (interests), the advertiser targets specific audiences with specific advertising messages. Moreover, one advertisement may be loaded into one group of receiving devices 40 while a second advertisement is loaded into a second group of receiving devices 40. Even though different advertisements are loaded into different receiving devices 40, all such advertisements may be associated with the same index. Accordingly, issuance of the PRESENT command 500c relative to such common index value causes distinct advertisement presentation for different groups of listeners. As may be appreciated, the radio signal transmission time associated with issuing the PRESENT command 500c is quite small as compared to similar advertisement broadcast time required to deliver by conventional means the same advertisement presentation, i.e., broadcast time required to present the advertisement to listeners currently tuned to the broadcast facility. Thus, an improved method and apparatus for message or advertisement presentation has been herein shown and described. Advertisement information is disseminated widely by radio signal broadcast to a population of receiving devices 40. The receiving devices 40 store this advertising information and present such information **multiple times** without requiring repeated radio signal transmission from the facility. In this manner, advertising presentation is made efficient with respect to radio transmission resources, and therefore less costly in regard to the costs associated with transmission of advertisement by radio signal (Col.

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9: 45 to col. 10:20).

See in general col. 2: 62 to col. 9: 44.

As per claims 14, 15, 20, 42 and 43, Dimitriadis does not expressly disclose replaying a stored advertisement a number of times up to a number equal to its associated play count, transmitting by a vehicle communication device data confirming the playing (playback) of the advertisement, retrieved from the memory of the vehicle radio system, and receiving by a central facility the transmitted data (uploading the activity log or transaction data associated with each displayed advertisement to the Central Facility or broadcast system 20).

However, Hite discloses a system and method for delivering targeted advertisements to specific consumers, in a cable TV environment, based on the specific customers' desires, needs, interest, wants or psychographic profile or preferences. In one embodiment, a set top box or delivery mechanism associated with a cable company and located at a customer's site receives a tagged content or TV program with a tagged advertisement (advertisement having a unique CID) from a content provider or Media Origination Facility 300 of fig. 1 wherein the set top box first displays the TV program along with the flagged or tagged advertisement or advertisement having a unique CID code (commercial ID) if the CID code corresponding to the embedded advertisement matches a CID code pre-recorded or stored in the set top box memory and wherein the stored CID represents the customer's psychographic profile or preference. And if there is a CID code match, then the set top box causes the said advertisement to be displayed on the customer's TV screen during a commercial break in the TV program as originally scheduled (figs. 1-2; col. 3: 65 to col. 4: 11; col. 4: 33-39; col. 5: 39-67; col. 8: 64 to col. 9: 42;

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col. 13: 47-53). In one embodiment, a memory device RD, associated with the home display unit, pre-records the advertising information along with the related CID codes and the system is operable to retrieve therefrom and display an advertisement during a commercial break in a transmitted programming or broadcast when a CID in the transmission matches a CID stored in the RD device (col. 6: 60 to col. 7:34).

It is further to be understood that additional codes, such as a **frequency** indicator code representing the number of times an advertisement is to be successfully displayed, are appended to the CID code (representing a customer and/or a commercial) for enhancing the system. The frequency indicator code, stored locally on the set top box memory at the customer's site, is appended to a commercial's CID code wherein the content (counter) of the frequency indicator code decrements for each successful display of the associated commercial or advertisement and when the frequency indicator code reaches zero, the advertisement will no longer be displayed by the set top box. In other words, the number of times a particular advertisement should be displayed to the user or the frequency of viewing (frequency code) by the viewer a particular advertisement is appended to the CID code, representing the viewer's or user's psychographic profile or preference information, stored in the permanent memory (preference information storage) of the set-top box or display device (content delivery mechanism).

Furthermore, a registration code could be added to the CID code and stored at the point of display. When such a commercial is successfully displayed, the registration code is communicated back upstream to the signal origination site. A time and date stamp is added. Two levels of registration are possible. In the simpler level of registration, a count is accumulated at the origination point or some other suitable place indicating the total number of

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commercials successfully displayed at all locations. Viewer identities are not tabulated. In the second level of registration, a viewer identification number is included in the acknowledgment messages centrally collected. A certification code could also be added to the CID code and stored at the point of display. When such a commercial is successfully displayed, the certification code is communicated back upstream to the signal origination site. A time and date stamp is added. In the case of certification, the viewer responds to the advertisement. This response could be to answer a question, to merely make an acknowledgment, or to request a coupon or other item of value. This indicates that not only has the commercial been successfully displayed, but it has also been viewed, recognized, and acted upon.

Additionally, there are several options for the upstream transmission of registration or certification codes. This code could be transmitted upstream at the time the commercial was successfully received. Alternatively, the fact that it was received could be stored at the receive site and relayed to the signal origination site upon request or at a pre-programmed more convenient time. Several options for upstream communication exist. These include two-way cable systems, **radio transmissions**, telephonic communication, or the physical conveyance of a printed report, a magnetic, optical, electronic or other recorded report.

In summary, with the present system, television (and/or radio) and advertising are enhanced by targeting, delivering and displaying electronic advertising messages (commercials) within specified programming in one or more pre-determined households (or on specific display devices) while simultaneously preventing a commercial from being displayed in other households or on other displays for which it is not intended. Commercials can be delivered to specified homes or displays via either over-the-air broadcast or wired delivery systems.

Therefore, an ordinary skilled artisan would have been motivated at the time of the invention to incorporate the teachings of Hite into the system of Dimitriadis so as to store a frequency code register (counter) capable of counting the number of times a filtered or matched advertisement is successfully displayed and a certification code indicative of the successful display of an advertisement along with the user's preference information (profile), advertising selection or presentation criteria and associated index values on the user's vehicle device 40 memory, wherein the content of the frequency code counter increments each time the filtered and matched advertisement is successfully displayed or played to the user until it reaches a preset value and wherein the certification code is communicated from the vehicle radio communication system upstream or upward to the Central Facility for further processing and marketing analysis, thereby using by the Central Facility the transaction data, read from the transmitted registration code, frequency code and certification code, associated with the displayed or played advertisement not only to prepare accurate billing statements for the participating advertiser of the displayed advertisement and to schedule further delivery of advertisements to the mobile unit or device 40, but also to further target the user of the mobile unit or mobile vehicle 10 by filtering incoming broadcasts or advertisements in accordance with the user or operator of the mobile vehicle 10 designated criteria and the user's exposure to advertisements recorded in the memory of the vehicle device 40 or displayed or played advertisements to automatically select and store without the user's input specific advertisements or broadcast data 26 transmitted over the radio broadcast system 20 in the memory or customized database of the information device 40 of the mobile unit or mobile vehicle 10, while measuring the effectiveness of the system.

(10) Response to Argument

In general, Appellant argues in general, regarding the 102 Rejection of at least independent claim 1, that **the use of marker data in the radio broadcast stream to identify the location of an advertising slot is not taught or suggested by Dimitriadis and that, in Dimitriadis, advertising is played only in response to either a command from a separate data broadcast stream (data broadcast 26) and not from radio broadcast stream (voice broadcast 22)** (See page 10, last paragraph, of the Brief). Having said that, the Appellant concludes that there is nothing discussed in Dimitriadis about using marker data in the radio broadcast stream (voice broadcast 22) to initiate or trigger the presentation of an advertisement. In short, the Appellant submits that there has been no evidence supplied by the Examiner to show that the system of Dimitriadis necessarily requires the use of marker data in the voice broadcast 22 and the advertisements in Dimitriadis, on the contrary, could be inserted into the voice broadcast 22 without the use of marker data by, for example, by interrupting programming content using conventional techniques to find breaks between pieces of content (See bottom of page 12 and beginning of page 13 of the Brief).

However, the Examiner completely and respectfully disagrees with the Appellant's findings. First, the **marker data** is herein being interpreted as any triggering signal, event, condition, such as a break in a broadcast transmission stream, which signals when to play or display a content or advertising. Second, the argued claim 1 recites the step of receiving a radio advertisement, storing the radio advertisement in memory, receiving by a vehicle a radio broadcast stream, monitoring the broadcast for the presence of a marker data and playing the

stored advertisement when the marker data is being detected in the broadcast. Contrary to the Appellant's contention, and broadly interpreted, Dimitriadis implicitly or explicitly teaches, with respect to claim 1, the steps of receiving by the radio broadcast system 20, from an advertiser or subscriber, at least one radio advertisement, storing the radio advertisement in memory at the radio broadcast system 20, broadcasting by the broadcast system 20 to a device 40 of a vehicle 10 a radio broadcast stream having inserted thereon a triggering signal, event marker, command, time break or marker data, which indicates to the system when it is time to break the broadcast stream and retrieve the at least one advertisement from memory of the system and present it to the user of device 40 of vehicle 10 as the vehicle travels (col. 3: 56-67). Further, the above teaching is widely practiced in radio and TV commercial presentation, which insert a trigger signal or marker data, such as a break, in a transmitted programming/signal or broadcast stream and the detection of the trigger signal at a remote location causes the retrieval and presentation of at least one commercial or ad at the remote location via a remote device. To this end, the Examiner does not read specific limitations from the specification into the claim, which is prosecuted for what it actually discloses, but not for what the Appellant intends to feature therein. Moreover, features that are inherent in the art or widely used in the industry need not be disclosed in a reference in order for these features to be anticipated by the current prior art; in other words, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art does not preclude a finding of anticipation (MPEP 2131.01 (III) (See the Hite's Patent used here and US Patent 5,627,549 to Park).

Third, the Appellant submits, with respect to at least claim 1 (including claims 26 and 43 (treated under 103), that in Dimitriadis, advertising is played only in response to

either a command from a separate data broadcast stream (data broadcast 26) and not from radio broadcast stream (voice broadcast 22) (See page 10, last paragraph, of the Brief). The latter confirms the Examiner's position that Dimitriadis teaches the claim limitations as recited in at least independent claims 1, 26 and 43. Indeed, any transmission or broadcast stream (data or voice) is from the radio broadcast system 20 or from a single FM radio source and constitutes a radio signal or broadcast stream. At this point, contrary to the Appellant's findings, inserting the marker data or command in a **voice** broadcast stream instead of a **data** broadcast stream appears to be non-functional and does not impact the claimed system in any way since the voice broadcast stream and the data broadcast stream are considered as (FM) radio signals or radio broadcast stream (see col. 3: 29-36). **In fact, argued claim 1 never recites that the radio broadcast stream is a voice signal and, as shown here by Dimitriadis, the radio broadcast stream or radio signal can include both voice and data.** Thus, Dimitriadis anticipates the steps of embedding a command or triggering signal or a marker data in a broadcast stream, transmitted from the radio broadcast system 20 to device 40 of the vehicle 10, and wherein the detection of the triggering signal or command at the device 40 causes the retrieval of one stored advertisement from the memory of the device 40 and wherein the retrieved advertisement is presented/played to the user of the device 40 coupled to vehicle 10. **Additionally, Appellant submits that the advertisements in Dimitriadis could be inserted into the voice broadcast 22 without the use of marker data by, for example, by interrupting programming content using conventional techniques to find breaks between pieces of content** (See bottom of page 12 and beginning of page 13 of the Brief). Once again, and broadly read, a break in a programming or broadcast stream is a marker data. Hence, and based on Appellant's own

standard and interpretation of the prior art, finding a break in a transmitted radio broadcast stream and interrupting the broadcast to retrieve a stored advertisement for presentation and play on a remote device reads on at least claims 1 and 26 (and claim 43.treated under 103)

Fourth, Dimitriadis discloses a system, wherein advertising information is pre-loaded into a collection of remote receiving and presentation devices (40) (radios installed in vehicles). A presentation command (presentation criteria or a triggering signal **or marker data**) is broadcast over a radio broadcast 20 to a device (40) that causes presentation, in audio or text format, of at least one of the advertisements stored in the memory of the device (40) (monitoring a radio broadcast stream for marker data of an advertising slot within the radio broadcast stream, which triggers the presentation of the at least one stored advertisement-Col. 3: 56-67; col. 4: 36-39; col. 6: 32-38; col. 10: 2-8).

Fifth, the remarks regarding the dependent claims are fully addressed, in the Office Action, alone or in conjunction with independent claims 1 and 26.

Sixth, the 103 Rejection is deemed proper and the combination of Dimitriadis and Hite does indeed produce the claimed invention and there is a good motivation to combine the references, contrary to the Appellant's contention, as featured in the Office Action. In fact, most of the arguments regarding independent claim 43 were answered above.

In short, contrary to the Appellant's conclusion, Dimitriadis an advertising system comprising:

a radio signal transmission facility (radio broadcast system 20) for providing voice and data broadcast signals (radio broadcast streams,

a plurality of remote receiving devices 40, coupled to vehicles 10, for collecting said voice and data signal broadcasts, each of said receiving devices 40 storing in local memory selected portions of at least one of said voice and data broadcasts as a stored advertisement therein in association with an **index value** (marker data) whereby subsequent transmission within at least one of said voice and data broadcasts (from the radio broadcast system 20) references said **index value** (marker data) and causes said remote receiving device to present/play the corresponding stored advertisement via a device 40 of a vehicle 10, and

wherein each of said remote receiving devices 40 stores a plurality of advertisements in its local permanent memory, each advertisement is associated with an **index value** (marker data) whereby said broadcast facility triggers presentation of a selected stored advertisement at a selected remote receiving device 40 by broadcast of a command to a selected receiving device in conjunction with a selected index value.

(See claims 1 and 3 of the current reference).

Therefore, the Appellant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Appellant's arguments as herein presented are not plausible and thus, the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JDJ

03/29/07

Conferees:

Eric Stamber (3622 SPE) 


Vincent Millin (Appeal Conference Specialist)

JEAN D. JANVIER
PRIMARY EXAMINER

